App. F. IX-4

Previous References 1933 (Index) File No. 33-33
Serial Nos. 1-3

Later References

PRESERVED

72

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Proceedings - manuscript

Part A for January 1934.

SUBJECT.

Bill further to amend the Code of Criminal Procedure (Regn No XLII of 1933)

Serial No.

10 A 01 28

Term

Nec. dem. of by Commn

Mysore Di-

Return to frequent
adjournments consequent on the
advantage taken by the accused
in the Mysore disturbances case
and states that the working
of Section 526(8) of Cr. P.C as it
stands makes such postponement
possible and requests that the
law may be amended on the
lines of Act XXI of 1932 of Burma
India

Vide orders of the Asst Secy
(Genl) dt 29/8/33 and the Member dt 30.8.33
on the D.O.

Subd for perusal

The question of amending the
section is under consideration
separately and draft Bill with
Statement of Objects and Reasons
is also prepared The file was sent
to the High Court for the
opinion of the Judges. The receipt
of the same may perhaps be awaited
from

This may be put up to the Member
on 15th

NOTE—Contn. Sheet.

WD 70—GBPM—60,000—13-8-33.

Serial No.

1) It will be a

fact the dasara Procession case in the 1st Munsif's Court Mysore is taking that the accused adopting obstructive tactics by misuse of themselves of the provision for adjournment under Sec 526(8) Cr. Pro. Code. According to this subsection, if an accused intimates the Trial Court that he intends applying for the transfer of the case it is obligatory on the Court to adjourn the case for such period as will afford reasonable time for an application to be made & an order to be obtained thereon. An accused may make any number of such applications & if there are more than one accused as is usually the case in rioting cases, each accused can avail himself of this provision & paralyse the trial.

2) Sec 526(8) was adopted in our Legislation of 1927 on the lines of the section as amended in Br. India by the Code of 1923. This was formally the part of India in practical working to lead to grave abuse, & they amended this section by Act XXI of 1932.

3) It is expedient that we also amend section 526 Cr. P. Code

) A draft bill & Statement of principles are put up for Consideration

) If approved the Bill may be passed

4)

5)

NOTE—Contn. Sheet.

File No. 3 C of 1933.

at the Dasara Session give R.A & passed at the December L.C. Session at an adjourning ... Two years

First Member) 28/8/33

The above note explains the necessity for an amendment of Sec. 526 Cr.P.C & has been put up at my request.

Before proceeding with this further, we may consult the High Court officials

Please take urgent action accordingly

by 28/8/33

28/8/33

(2) Forwarded with compliments to the Registrar of the High Court in Mysore for favour of obtaining and communicating early the opinion of the Honourable Judges of the High Court, as the matter has to be placed before the ensuing session of the Representative Assembly.

By Order,

For Chief Secretary to Government

Bangalore,
Dated 28th August 1933

33-34 Cwo. 233.

General and Revenue Secretariat | Legislative File No. C of 1933 | [App. F. III—2

Serial No.

High Court of Mysore,

C.No.233/33-34. Bangalore, 31st August 1933.

9) Returned with compliments with the opinion of the Judges of the High Court as in the note attached. It may be added that the present opportunity may be availed of for amending also sub-section (6) of Section 526 by the substitution of the expression "Government Advocate" for the expression "Public Prosecutor" as there is no Public Prosecutor attached to the High Court in Mysore and it is the Government Advocate that represents Government in all criminal proceedings before the High Court and as there is difference in the definition of the term "Public Prosecutor" between the British Indian Criminal Procedure Code and our Code. This amendment seems essential.

S. Venkataranga Iyenga.
REGISTRAR.

31/8/33

(For Member) 31/8/33

10) 31/8/33

11) The Bill and Statement have been suitably revised and put up

NOTE—Contn. Sheet.

Bill for an Act to amend S. 526.

File No. 3 of 193

General and Revenue Secretariat

The attached papers deal with requests for subsequent adjournments that are being granted in Mysore disturbance cases and suggests the amendment of Section 526 Cr. P.C. on the lines of Bombay Act XX I of 1932. The file is therewith linked.

sd
19/33

Revised draft of Bill & statement of general principles are for Consideration

1st Member)

2nd Member) ✓

sd 21/9/33

sd
19/9/33

sd 19/9(8)

(b) Jon
4/9

(b) under Rule (b) of the Rules for dealing with measures of proposed legislation (Flag C) the matter has to be considered in Council & approval of obtained (ex placing before H.A.

Secretariat of Council
4 SEP. 1933
Received

1075 to 1087

[App. F. III–

General and Revenue Secretariat | File No 34 of 1933

Serial No.

Chief Secretary, 5/9/33

Dewan)

Sd 9
6-9-33

Submitted with N.F.N.

1st Member) 7/9/33

F.N. Signed by Member.

8/9/33 S. N. Bhatnagar,

DEWAN'S OFFICE
176
6 SEP. 1933

OFFICE OF THE FIRST MEMBER OF COUNCIL
7 SEPT. 1933
No. 1969

Submitted to His Highness.

I submit herewith a Final Note by the First

Member of Council on the subject of regarding a

Bill further to amend the Code of Criminal Procedure,

1904.

for His Highness' gracious approval.

Mirza M. Hussain —

Dewan.

9-9-33

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Bill further to amend the Code of Criminal Procedure, 1904.

Order.

~~KRW~~

12/9/33

General and Revenue
Secretariat

Bill to further amend the Code of Criminal Procedure 1904.

31. All urgent or confidential files returned with His Highness' orders may in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Headquarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to Members of Council for perusal of His Highness' orders before/after issue of orders. (*Vide Rules* * 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

R. Rawcde

Chief Secretary to Government.

Through the Secretary to Government,

....Department.

2447/1579

1576/1579

FIRST MEMBER OF COUNCIL. 16/9/80

SECOND MEMBER OF COUNCIL. 17/9

17/9/80.

1087/1925 Bill further time in C. vs P. C. 13 12

General and Revenue Secretariat | File No 37 of 1933 | [App. F. III—2

Serial No.

in the file of the Statement of Objects & Reasons being the same as the Statement of Gen. Principles placed before the R.

Bm 2/10

H. C. Office) Spare printed copies of the Bill with Compt. have been taken and the file put up

Bm 13/10/33. Prot. Bx. with Compts)

13/10/33

Subs with draft forwarding copies of Bill to the Residency and also requesting that the consent of the Govt. of India to the passing of the said Bill into Law may be obtained & intimated early

Bm 16/10 Bm

G 16/10/33

No Pol 418 of 24.10.33

To The Secy to the Resident

Forwards copies of the Bill and requests that the Consent of the Govt of India to the passing of the Bill into Law as one Sitting may be obtained & communicated early.

13 Bill to amend the Criminal Procedure Code

File No. Legs 36 of 1933. General and Revenue Secretariat

No 10738 & 20-11-33 from Secy to the Hon'ble the Resident in Mysore

Requests to forward two more spare copies of the Bill to amend the Mysore Cr. Pro. Code

ruled into a draft

24/11/33

Issued No Pol 5742 & 24-11-33.

SECTION 3-25 REV

In connection of the Govt of India to the passing of the said Bill has not yet been received it is proposed to pass the said at one sitting.

Draft reminder to the Resy is sent for orders

Issued No Pol 5742 & 24-11-33

2/12

Issued No Pol 5742 & 12-33

In the light of the Statement of H.E. the Viceroy that Art 18 of the Instrument has been removed perhaps unnecessary to wait for the submission of the consent of the Govt of India. The following motions are:

TYPING SECTION 2 DEC. 1933 4-20 P.M. GENL. & REV. SECT

Bill for an Act to amend the Code of Criminal Procedure

[App. F. III—2.0

General and Revenue Secretariat | Legislative File No. 36 of 1933.

Serial No.

The Statement of General Principles has been sent to P.A. office in advance. As file may be sent for information to Head Office for note and return

Done 21/9/33

CE 21/9/33

noted returned 22/9

The Statement was sent on P.A on the 20th Sept 1933 and the majority were not in favour of the amendment.

It is now for orders whether the Bill may be introduced into the Legislature

In this connection it is noted that the sitting of the L.C to be held in Dec 33 is perhaps the last and unless it is proposed to pass the Bill at one sitting the Bill may not be passed into Law within the remaining term of this Council. This will also mean the previous publication of the Bill and obtaining the Sanction of the Govt of India for passing it at one sitting by suspending the rules of business. Hood

1 2 Bill further to amend the Cr P. Co

File No. 3 of 1933. General and Revenue Secretariat

..... the Bill was not approved by the R.A. It is however an important measure & the Hyh Court have also stressed its necessity. It may be published under Rule 8 & introduced into the L.C at the Dec Session & passed at one sitting. The sanction of the Govt of India & its passing will therefore be obtained.

OFFICE OF THE FIRST MEMBER OF COUNCIL No. 2661

Govt Member)

G

5/10/33

Papers please submit to Secy

GC

5/10/33

RT 5/10/33

Secy.

G 5/10

JM

6-10-33

RR

MI

G 9/11

The file may be sent to the L.C Office for taking action to publish the Bill

Supt L.C. Attention Tamplu

9/10

Book

5/10/33.

Three copies of the Bill may, as sent for taking further action.

6/

11/10/

DEWAN'S OFFICE 2335 6 - OCT. 1933

Bill further to amend P.P.C. S. 326/14

General and Revenue Secretariat | File No. 34 of 1933 | [App. F. III—2

Serial No.

Therefore suggested for being included in the Agenda for the meeting of the Legislative Council on the 18th inst:—

Motion (1) that the Bill published under Rule 8 of the Rules of business be read in Council

(2) that the Rules of business be suspended and the Bill be taken up for consideration at once without being referred to a Select Committee and passed

Moved: The Finance Member of Council
Seconded: The Chief Secretary to Govt

Done 7.12.33 MAR

We have not yet received official Communication from the Govt of India re abrogation of Art 18 Till then it may not be wise to act on the announcement in the Speech

Chief Secretary

C
H.C.
7/12

I do not see any objection to approve tentatively subject to receipt of sanction of the Govt of India

Chief Secretary

OFFICE OF THE FIRST MEMBER OF COUNCIL
11 DEC. 1933
No. 4466

CHIEF SECRETARY
9 DEC. 1933

NOTE—Contn. Sheet.

WD 0434—GPB—15,000—12-10-32

File No. 3 ((of 193

General and Revenue Secretariat

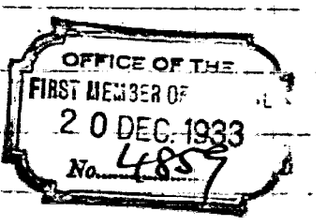
Serial No.

with a note

(1st Member)

a

14/12/33



by

20/12

Note on the Criminal Procedure Code Amendment Bill

Before the amendment of Sec. 526 of the Cr. Procedure Code in 1927, if in any criminal case or appeal before the commencemet of the hearing, the Public Prosecutor, the complainant, or the accused notified to the Court his intention to make an application for a transfer of the case, the Court ~~should~~ has to exercise its powers of postponement of the case given to it under Sec. 334 in such a manner as will afford a reasonable time for the application being made and orders obtained thereon. The amendment of 1927 has made the adjournment obligatory whenever an application for transfer is made at any time in the course of an enquiry or trial. This provision regarding the adjournment of trials applies to appeals also. ~~This provision~~

This provision can be and is being ~~misused~~ misused.....for the purpose of harassing and annoying opponents and delaying justice. Every time an accused notifies his intention to apply for trans-fer, the hearing of the case will have to be postponed and if there are more than one accused and if every one of the accused had recourse to this practice the trial will be unduly prolonged and justice delayed. No discretion is given to the Court. There is no limit to the number of such notifications which an accused may give in the course of a trial. Nor is there any obligation on a party who has notified

his intention of moving the High Court to take any such action.

The position created by Sec. 526 (8) as has been observed in a Calcutta case is truly amazing, one effect being that no accused person can be convicted except with his own consent. The consensus of judicial opinion in British India led to the amendment of this Section in 1932.

Instances are not wanting in Mysore where justice was delayed by a recourse to these tactics. In a case before the High Court where a second application for transfer was presented by the accused, the learned Judge observed that repeated and vexatious transfer applications of the kind in question might enable an accused to stop a trial or enquiry altogether. In another case, the allegations made in the petition for transfer were characterised as vague and vexatious and evidently calculated to impede the further progress of the trial. Out of a total number of 157 transfer applications filed before the High Court since 1928-29 103 applications were rejected or dismissed. Thus, 2/3rds of the number of transfer applications are more or less based on frivolous grounds and in all of them the trial in the lower court must have been held up on account of the obligation provision of the Section.

In order that the provisions

in regard to the transfer of criminal cases may be used to promote the ends of justice, it is proposed to amend Sec. 526 by providing that it is not obligatory on the Court to adjourn cases on a second or subsequent intimation of intention to apply for transfer or on a subsequent intimation by any other accused in the case. The powers of the Court under Sec. 344 to adjourn cases from time to time are not, however, restricted and a Court will exercise its discretion judiciously if the grounds for adjournment are satisfactory. By this amendment an accused is not in any way prejudiced; for, he would have every opportunity of putting forth his grounds for transfer at the time of his first application for transfer and subsequent application would be mostly vexatious. All the aggrieved accused could join in making the first application.

(b) The amendment does not in any way affect the grounds on which the High Court may transfer a criminal case under Sec. 526 (1) nor does it affect the right of the accused to approach the High Court for transfer at any stage of a case.

(c) Accused who have reasonable and bona fide grounds will be able to obtain reliefs and it is only obstructive tactics that are proposed to be prevented.

Under Sec. 526 (6) (a), the High Court can award as cost any expenses incurred by the opponent in consequence of the application,

Bill further to amend C. P. C., 1904.

16

General and Revenue Secretariat | File No. | of 193 | [App. F. III—2

Serial No.

At the meeting of the L.C held on 18.12.33 the Bill was read in Council and referred to a S.C consisting of the following and with direction to present their Report on 20.12.33

1 First Member of Council
Hon'ble
2 R. Ranga Rao B.A. B.L
3 A.V. Ramaswami M.A. L.T.
4 K.V. Anantaraman B.A.
5 A.R. Nageswara Iyer M.A. B.L
6 H.C. Dasappa B.A., B.L.
7 M.R. Srinivasa Iyengar, B.L.
8 Dr. Chenraddhanaiya, B.A., L.T.
9 Dr. Chengalaraya Reddi, B.A.,
10 Below Srinivasa Iyengar, B.A., B.L.

The S.C met on 19.12.33 at 8.30 A.M and considered the Bill and submitted their report which was published with Notification No 267 L.C 19.12.33

The Report of the S.C & the Bill as revised by them were considered at the meeting held on 20.12.33. and there were also two amendments by Hon'ble M. Chennappa and D.S. Kallappa These were withdrawn after discussion and the Bill as amended by the S.C was finally passed.

NOTE—Contn. Sheet.

WD 0434—GPB—15,000—12-10-33

Bill further to amend the Cr. P.C 1904

File No of 193

General and Revenue Secretariat

Serial No.

DEPT. 4131
17. DEC. 1933

The Consent of the Governor of India to the passing of the Bill into Law having been received (vide D.O. No 4407 of 18.12.33) the Sanction of ~~H~~ has to be obtained to the promulgation of the Bill into Law.

D.F.N. is drawn

2/12

Submitted with D.F.N.

OFFICE OF THE FIRST MEMBER C[illegible]
23 DEC. 1933
No. 4954

(1st Member) 23/12/33

F.N. Signed by Member

20/12

S.N. put-up

(Dewan)

Final Note by the First Member of Council.

Subject:—

Bill further to amend the Code of Criminal Procedure, 1904.

Pages 6 X 8 of Office Notes

Gracious sanction of His Highness was accorded in September 1933 to place before the Representative Assembly a statement of general principles of the above Bill. It was accordingly placed before the Representative Assembly in the Dasara Session but it was not however approved by that body.

The Bill is intended mainly to prevent the adoption of obstructive tactics by accused persons in criminal cases by repeated applications to the High Court for transfer and follows a amendment which has been adopted in British India. The measure is very important and urgent in the interests of the speedy disposal of criminal cases, and it was therefore decided to place it before the Legislative Council. Accordingly the Bill was introduced in the Legislative Council after previous publication and was read in Council at the meeting held on the 18th instant and referred to a Select Committee with directions to present its report on the 20th instant. The Bill was slightly modified by them and the modified Bill together with the report of the Select Committee were considered at the meeting held on the 20th instant and finally passed as modified.

As regards the consent of the Government of India to this Bill the Residency has intimated that having regard to the withdrawal of the restrictions on legislation in the Mysore State under Article 18 of the treaty, there is no objection to the Bill being passed.

I now solicit gracious approval of His Highness to the promulgation of the Bill as law.

Bangalore,
26th December 1933.

MEMBER OF COUNCIL.

Submitted to His Highness.

I submit herewith a Final Note by the First *Member of Council* re: Bill further to amend the Code of Criminal Procedure, 1904,

for His Highness' gracious apprc

Mirza M. Ismail

Dewan.

27-12-33

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Promulgation as law of the Bill further to amend the Code of Criminal Procedure, 1904

Order.

KRW
29/12/3

General and Revenue
Secretariat

Promulgation as Act of the bill further to amend the Code of Criminal Procedure, 1924

in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Head-quarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to Members of Council for perusal of His Highness' orders before/after issue of orders. (*Vide* Rules 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

K. Rayed

Chief Secretary to Governm

Through the Secretary to Government,

Department.

FIRST MEMBER OF COUNCIL (on leave)

SECOND MEMBER OF COUNCIL.

£078
2/1/24

2/1

Prohn.

(43)
3/1/24

u 31.1.24

276.8 ✓

Code of Cr Pc (Amendment) Regn
XIII of 1933

General and Revenue Secretariat | File No. 36 of 1933 | [App. F. III—2

Serial No.

Draft G.O pursuance the Regn as Regn XIII of 1933 is sent

Dom 4.1.34 MKK

Issue 6.1.34

TYPING SECTION * 6 JAN 1934 * GENL. & REV. SECTT

G.O No D 3192-91 6.1.34

The Compiler,
Publishers the Regn &c. for the amendment the Cr P.C at Regn XIII of 1933.

Initio copies received. Copies forwarded to the Revy Superintendent

A Dec
1-3-34

making such an application and has failed without sufficient cause to take advantage of it.

reasonable opportunity of making such an application and has failed without sufficient cause to take advantage of it.

"Explanation:- Nothing contained in sub-section (8) or sub-section (9) restricts the powers of a court under section 344"

(10) If, before the argument (if any) for the admission of an appeal begins, or, in the case of an appeal admitted before the argument for the appellant begins, any party interested intimates to the Court that he intends to make an application under this section, the Court shall, upon such party executing, if so required, a bond without sureties of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court postpone the appeal for such ~~appeal~~ for such a period as will afford sufficient time for application to be made and an order to be obtained thereon"

As in force in Myanmar

(8) If, in the course of any inquiry or trial, or before the commencement of the hearing of any appeal, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending his intention to make an application under this section in respect of such case or appeal, the Court shall adjourn the case or postpone the appeal for such a period as will afford a reasonable time for the application to be made and an order to be obtained thereon.

(9) Notwithstanding anything hereinbefore contained a Judge presiding in a Court of Session shall not be required to adjourn a trial under sub-section (8) if he is of opinion that the person notifying his intention of making an application under this section has had

As amended in British India by Act XXI of 3

(8) If in any inquiry under Chapter VIII or Chapter XVIII or in any trial, any party interested intimates to the Court at any stage before the defence closes its case that he intends to make an application under this section, the Court shall, upon his executing, if so required, a bond without sureties, of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court, adjourn the case for such a period as will afford - - - sufficient time for the application to be made and an order to be obtained thereon;

Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party, or, where an adjournment under this sub-section has already been obtained by one of several accused, upon a subsequent intimation by any other accused"

(9) Notwithstanding anything hereinbefore contained a Judge presiding in a Court of Session shall not be required to adjourn a trial under sub-section (8) if he is or opinion that the person notifying his intention

On 30-3-31 V.S.Sanjeeva Rao filed Criminal Petition No.102/30-31 in the High Court under Sec.526, Cr.P praying for the transfer of Criminal Case No.5/30-31 on the file of the District Magistrate, Bangalore. That petition was heard aby a Bench of two Judges and rejected on 30-6-31.

On 13-7-31, he again presented another transfer application to the High Court in Criminal Petition No.9/31-32 and that petition was also rejected on 6-8-31 on the ground that it was entirely a frivolous and vexatious one. The following observation of Sreenivasa Iyer,J. in the case is noteworthy :-

"There is thus no cause for any reasonable apprehension that the accused may not have a fair and impartial trial at the hands of the Magistrate. This is the second application for transfer presented by the accused. The first was rejected by this Court on 30th of June, and the present application was presented on 13-7-1931, and the first ground in the present application is virtually the same as the fourth ground in the previous application, which has already been dealt with in the previous order. The second ground was not pressed at

the hearing; and the third has already been referred to. As pointed out in the previous order of this Court, the complaint was filed on the 30th of March 1931, and the accused appeared in court on the 21st April: and the reasons which lead to the delay in the trial of the case are mentioned therein. Under Section 526(8) Criminal Procedure Code when the petitioner notifies his intention to apply for transfer, the case has to be adjourned. I have carefully examined the grounds alleged by the petitioner and they do not in the least suggest that he will not get a fair hearing. Repeated and vexatious transfer applications of the kind in question might enable an accuse to stop a trial or enquiry altogether under Section 526(8). It is unnecessary to state that under the new Criminal Procedure Code this Court has ample powers to award reasonable costs in favour of the persons opposing - frivolous and vexatious applications of the kind in question. In a proper case this Court will certainly exercise the powers vested in this court. In the recent Full Bench decision of the Bombay High Court (54 B 553) Sir Amberson Marten, Chief Justice. observes:-

"We also cannot shut our eyes to the fact that repeated transfer applications of this kind might

in certain events enable a complainant, or for a matter of that an accused, to stop a trial or enquiry altogether under Section 526(8), because as soon as one application for a transfer was rejected he could proceed forthwith to make another with only a possible liability for costs under Section 526 (6-A) But, fortunately, in our judgment, it is not open either to a complainant or to an accused to hinder the administration of justice in that way. We hold it to be clear that under Section 526-Cr.P.C., we can, if necessary, exercise the inherent power of the High Court to prevent the abuse of the process to any Court; and in such a case as I have indicated we ought unhesitatingly to apply that power.

Section 561-A runs:-

> 'Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice

To my mind it is clear that one of the ends of justice is to have a case - properly heard and concluded within a reasonable time. Accordingly, if frivolous and vexatious applications are resorted to as a means of prevent-

preventing the ends of justice being attained, then I would hold that the court ought to exercise its above inherent power to prevent its process being thus abused.

So too in certain cases, speaking for myself, conduct of this sort might, I think, amount to contempt of court which could be punished in various ways."

In Criminal Petition No.24/33-34 (Vishakantaiya Vs. Government of Mysore) K.Shankaranarayana Rao,J. has made the following observations in rejecting that petition :

"Moreover, if the petitioner had any such real apprehension, it is difficult to understand why he did not urge these grounds earlier and ask for a transfer of the case, though the proceedings commenced over 8 months ago. The other allegations made in the petition are quite vague and appear to be vexatious, evidently calculated to impede the further progress of the trial."

In rejecting the tranfer petition in Criminal Petition No.22/28-29 Sreenivasa Iyer,J. has observed :-

"This is obviously a frivolous application and is dismissed."

year	No: of applications filed	No: of applications rejected or dismissed
1928-29	29	19
1929-30	35	24
1930-31	21	13
1931-32	46	29
1932-33	15	14
1933-34	11	4 (5 10
	157	

OPINION OF THE JUDGES OF THE HIGH COURT OF MYSORE, BANGALORE.

The law relating to transfer (Sectio 526 Cl.(8), Cr.P.C.) as it stands at presen contains many objectionable features. As soon as an accused person notifies his inten tion to apply to the High Court for a - transfer, the Magistrate is bound to adjourn the case and he has absolutely no discretion in the matter.

Again, the law does not prescribe an limit to the number of applications that can be made in the course of a single case, and in cases where there are many accused person there is nothing to prevent everyone of the accused to file an application for transfer, especially when the accused are represented by different Pleaders. Where an accused sees an important witness giving a strong evidence against him, he may immediately intimate that he is going to the High Court to move for a transfer on some pretext or other. Nor is there any obligation on the party who has notified his intention of - moving the High Court to take any such - action. Experience has shown that this - system of compulsory adjournment, which the law sanctions at present, has lent itself to very grave abuses resulting in miscarriage of justice. The section is used to delay the proceedings as a whole with a view to

tiring

tiring out the prosecution, to tampering with witnesses, to weaken the authority of the courts and to make it appear that the defence can hold up proceedings at any stage and that the presiding Magistrate is powerless to prevent it.

Mr. Justice Walsh of the Allahabad High Court has expressed the opinion that in the hands of reckless and irresponsible practitioners, the section might become a serious instrument of deliberate obstruction of justice, and waste of public time, bringing the administration of the law into contempt.

The late Chief Justice of the Bombay High Court has stated that we cannot shut our eyes to the fact that repeated transfer applications might enable a complainant or an accused to stop a trial or enquiry altogether under Section 526 Cl.(8) of the Criminal Procedure Code.

Again, the Lahore High Court very much doubted whether an innocent accused could reap any real benefit from the section though an unscrupulous accused, no matter however guilty, can irretrievably spoil a good case by delaying the hearing and harassing the witnesses and complainants.

The proposed bill is therefore of considerable importance and it is intended to suitably amend Section 526 of the Mysore

riminal

Criminal Procedure Code to bring it into line with the law as it exists in British India. The underlying principle of the Bill is to put a stop to the unlimited scope for compulsory adjournment under the present section.

It has to be observed that [the Bill does not in any way affect the grounds on which criminal cases may be transferred as specified in sub section (i) of Section 526, nor does it affect the right of any person concerned to make an application for transfer to the High Court at any stage of any proceedings as provided for in sub sections 3 and 4 of the Section.] The Bill proposes to - incorporate the changes introduced under - Act XXI of 1932, and it is desirable in public interests to pass it into law as early as - practicable.

--- :0:

S Venkata Ranga Iyengar

Registrar.

A Bill further to amend the Code of Criminal Procedure, 1904, for certain purpose.

Whereas it is expedient further to amend the Code of Criminal Procedure 1904, for the purpose hereinafter appearing; it is hereby enacted as follows:-

Short Title.

1. This Regulation may be called the Code of Criminal Procedure (Amendment) Regulation, 193$.

Amendment of Section 526.

2. In Section 526 of the Code of Criminal Procedure, 1904,—

(a) in sub-section (5), for the words " has power under this section to award by way of costs" the words " may under this section award by way of compensation" shall be substituted;

(b) In sub-section (6),for the words "Public Prosecutor" the words "Government Advocate" shall be substituted;

(c) In sub section (6-A), for the word - "costs" the word "compensation" shall be substituted, and for the words "any expenses reasonably incurred by such person in consequence of the application" the words "such sum not exceeding two hundred and fifty rupees as it may consider proper in the circumstances of the case " shall be substituted;

(d) for sub-section (8) the following sub-section shall be substituted, namely-

" (8) If in any inquiry under Chapter VIII or Chapter XVIII or in any trial any party interested intimates to the Court at any stage

before the defence closes its case that he intends to make an application under this section the Court shall, upon his executing, if so required, a bond without sureties, of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court adjourn the case for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon:

Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party or, where an adjournment under this sub-section has already been obtained by one of several accused, upon a subsequent intimation by any othe accused";

(e) to sub-section (9) the following Explanation shall be added, namely:-

"Explanation.- Nothing contained in sub-section (8) or sub-section (9) restricts the powers of a Court under Section 344";

(f) after sub-section (9) as so amended the following sub-section shall be added, namely:-

"(10) If, before the argument (if any) for the admission of an appeal begins, or, in the case of an appeal admitted, before the argument for the appellant begins, any party interested intimates to the Court that he intends to make an applica-

application under this section, the Court shall, upon such party executing, if so required, a bond without sureties of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court postpone the appeal for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon."

Statement of General Principles of the Bill further to amend the Code of Criminal Procedure 1904, for a certain purpose.

....

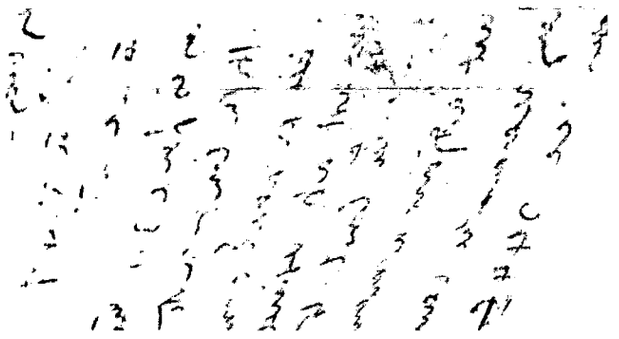
Sub-section 8 of section 526 of the Code of Criminal Procedure, 1904, as it stood prior to its amendment in 1927, provided that if, in any criminal case or appeal, before the commencement of the hearing, the Public Prosecutor the complainant or the accused notified to the Court before which the case or appeal was pending, his intention to make an application t the High Court for transfer of the case or appeal, the Court should exercise the powers of postponement or adjournment given by section 344 in such a manner as would afford a reasonab time for the application being made and an order being obtained thereon, before the accuse was called on for his defence, or, in the case of an appeal, before the hearing of the appeal. Regulation VI of 1927 amended the sub-section so as to provide that if an application for transfer is made at any time in the course of any inquiry or trial, or before the commencement of the hearing of any appeal, "the Court shall adjourn the case or postpone the appeal." It has been found that the practical working of this new procedure has lent itself to abuse and is calculated to defeat the ends of justice. If the accused notifies his intention to make an application to the High Court for transfer, the

the trial must be adjourned immediately. ~~Now~~ No discretion is given to the Court by the section. There is no limit to the number of such notifications which may be given during the course of any trial. Nor is there any obligation on the party who has notified his intention of moving the High Court to take any such action. The abuse of process which this sub-section makes possible has been pointedly referred to by Lort-Williams.J in the case of Neamat Sha Vs. Emperor (59 Calcutta 482). The abuse may obviously be aggravated to almost any extent, where there is a joint trial, and each accused person is represented by a different pleader. In the hands of reckless and irresponsible parties the section might become a serious instrument of deliberate obstruction of justice, and waste of public time, bringing the administration of the law into contempt. There was a general consensus of opinion among judicial authorities in British India that these provisions needed amendment and it was amended by Act XXI of 1932. The Judges of our High Court who were consulted recommend the adoption of the amendment made in British India. The Bill proposes to restrict this unlimited power of the accused to obtain adjournments, providing that when once an accused has secured an adjournment the Court shall not be bound to adjourn on any subsequent intimation of an intention to apply for transfer made by that same party, and that where there are more than one accused, it shall not be possible for

for different accused by a series of successive intimations to secure a series of adjournments.

Sub-section 6(A) was inserted in the section by the same amending Regulation VI of 1927. It has been found difficult to assess the expenses reasonably incurred by the Government when it opposes an application for transfer inasmuch as the law officers of the Government are paid by salary and not by fees. To obviate this difficulty, sub-sections(5)and(6-A) are proposed to be suitably amended.

Opportunity has also been taken for the substitution of the expression "Government Advocate" for the expression " Public Prosecutor" in sub-section (6) as there is no Public Prosecutor attached to the High Court in Mysore and it is the Government Advocate that represents Government in all criminal proceedings before the High Court.



Statement of Objects and Reasons

II. Statement of General Principles of the Bill further to amend the Code of Criminal Procedure, 1904.

Sub-section 8 of section 526 of the Code of Criminal Procedure, 1904, as it stood prior to its amendment in 1927, provided that if, in any criminal case or appeal, before the commencement of the hearing, the Public Prosecutor, the complainant or the accused notified to the Court before which the case or appeal was pending, his intention to make an application to the High Court for transfer of the case or appeal, the Court should exercise the powers of postponement or adjournment given by section 344 in such a manner as would afford a reasonable time for the application being made and an order being obtained thereon, before the accused was called on for his defence, or, in the case of an appeal, before the hearing of the appeal. Regulation VI of 1927, amended the sub-section so as to provide that if an application for transfer is made at any time in the course of any inquiry or trial, or before the commencement of the hearing of any appeal, "the Court shall adjourn the case or postpone the appeal." It has been found that the practical working of this new procedure has lent itself to abuse and is calculated to defeat the ends of justice. If the accused notifies his intention to make an application to the High Court for transfer, the trial must be adjourned immediately. No discretion is given to the Court by the section. There is no limit to the number of such notifications which may be given during the course of any trial. Nor is there any obligation on the party who has notified his intention of moving the High Court to take any such action. The abuse of process which this sub-section makes possible has been pointedly referred to by Lort-Williams, J. in the case of Neamat Sha *vs.* Emperor (59 Calcutta 482). The abuse may obviously be aggravated to almost any extent where there is a joint trial, and each accused person is represented by a different pleader. In the hands of reckless and irresponsible parties the section might become a serious instrument of deliberate obstruction of justice and waste of public time, bringing the administration of the law into contempt. There was a general consensus of opinion among judicial authorities in British India that these provisions needed amendment and it was amended by Act XXI of 1932. The Judges of our High Court who were consulted recommend the adoption of the amendment made in British India. The Bill proposes to restrict this unlimited power of the accused to obtain adjournments, by providing that when once an accused has secured an adjournment the Court shall not be bound to adjourn on any subsequent intimation of an intention to apply for transfer made by that same party, and that where there are more than one accused, it shall not be possible for different accused by a series of successive intimations to secure a series of adjournments.

The Bill does not in any way affect the grounds on which criminal cases may be transferred as specified in sub-section (i) of section 526, nor does it affect the right of any person concerned to make an application for transfer to the High Court at any stage of any proceedings as provided for in sub-sections (3) and (4) of the section.

The proposed amendment does not also restrict the power of the Court to grant adjournments for any reasonable cause under section 344.

Sub-section (6 A) was inserted in the section by the same amending Regulation VI of 1927. It has been found difficult to assess the expenses reasonably incurred by the Government when it opposes an application for transfer inasmuch as the law officers of the Government are paid by salary and not by fees. To obviate this difficulty, sub-sections (5) and (6A) are proposed to be suitably amended.

Opportunity has also been taken for the substitution of the expression "Government Advocate" for the expression "Public Prosecutor" in sub-section (6) as there is no Public Prosecutor attached to the High Court in Mysore and it is the Government Advocate that represents Government in all criminal proceedings before the Hight Court.

C. SUBRAHMANYA AIYAR,
Secretary, Representative Assembly.

A Bill further to amend the Code of Criminal Procedure, 1904, for a certain purpose.

Whereas it is expedient further to amend the Code of Criminal Procedure, 1904, for the purpose hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Regulation may be called the Code of Criminal Procedure (Amendment) Regulation, 193

Amendment of section 526

2. In section 526 of the Code of Criminal Procedure, 1904,—

(*a*) In sub-section (5), for the words "has power under this section to award by way of costs" the words "may under this section award by way of compensation" shall be substituted;

(*b*) In sub-section (6), for the words "Public Prosecutor" the words "Government Advocate" shall be substituted;

(*c*) In sub-section (6-A), for the word "costs" the word "compensation" shall be substituted, and for the words "any expenses reasonably incurred by such person in consequence of the application" the words "such sum not exceeding two hundred and fifty rupees as it may consider proper in the circumstances of the case" shall be substituted;

(*d*) for sub-section (8) the following sub-section shall be substituted, namely:—

"(8) If in any inquiry under Chapter VIII or Chapter XVIII or in any trial, any party interested intimates to the Court at any stage before the defence closes its case that he intends to make an application under this section, the Court shall, upon his executing, if so required, a bond without sureties, of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court, adjourn the case for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon:

Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party, or, where an adjournment under this sub-section has already been obtained by one of several accused, upon a subsequent intimation by any other accused";

(*e*) to sub-section (9) the following Explanation shall be added, namely:—

"*Explanation.*—Nothing contained in sub-section (8) or sub-section (9) restricts the powers of a Court under section 344";

(*f*) after sub-section (9) as so amended the following sub-section shall be added, namely:—

"(10) If, before the argument (if any) for the admission of an appeal begins, or, in the case of an appeal admitted, before the argument for the appellant begins, any party interested intimates to the Court that he intends to make an application under this section, the Court shall, upon such party executing, if so required, a bond without sureties of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court postpone the appeal for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon."

W D 465—GPB—50—30-9-33.

Immediate

Gene

No. A.
Enc.

OFFICE OF THE FIRST MEMBER COUNCIL
No. 1689

Office of the Deputy Commissione
Mysore District.

Dated, Mysore, 28th August 1933.

FROM

C. S. KUPPUSWAMIENGAR, ESQ.,
Dt. Magistrate & *Deputy Commissioner,*
Mysore Distric..

GENERAL SECRETARIAT
29 AUG. 1933
No.

TO

R. Ranga Rao, Esq., B.A.,B.L.,
Chief *Secretary to the Government of Mysore,*
Bangalore.

SIR,

This matter of amending the Cr. P. Code is being considered by the under secretary, Rao Bahadur. Abeen kept for perusal.

I have the honour to state that, as the Government are aware, the Mysore Disturbance cases are being needlessly prolonged owing to the obstructive tactics of the accused. One of the accused (Ramasetu) first came up to me and then took the matter up to the High Court for revision of an order passed by the City Magistrate and for transfer of the case from his file. His applications were rejected. Another accused by name Vishakantaiya next applied that the case may be transferred and his application was rejected by me. He carried the matter to the High Court, but without success. It is obvious that the accused ~~all~~ are deliberately bent on seeing that the disposal of the cases is delayed. Everytime, an accused notifies his intention to make a transfer application, the court is under section 526(8) of the Code of Criminal Procedure, bound to adjourn the case for such a period as will afford a reasonable time for the application to be made and an order to be obtained thereon. The accused in the Dasara Disturbance cases are taking full advantages of this section and nothing can prevent one accused after another putting in applications for transfer. If this is not checked, the disposal of these cases will take considerable time. Should such an attitude be taken in cases where there are a large number of accused, e.g. cases of rioting etc there will be great delay in the disposal of such cases. With a view to check frivolous applications for transfer, Sub section 8 of Section 526 Criminal Procedure Code has been

(Secy) 29/8 (First member) 29/8 seen mr Rao for necessary action

been amended in British India (Act XXI of 1932). I beg to state that it is high time that the said sub section in our Code is also similarly amended

I have the honour to be,

Sir,

Your most obedient servant,

District Magistrate,

Mysore District.

Appendix F G—1]

SUBJECT.....

.....

.....

Section Refood

File No. 34-33

Serial No. 1

Diary No. of letter replied to.....

No. Po 18/ Bus. Two

To

The Secretary to

the Govt. of Pesada

Sir

I am directed to forward herewith two copies of the Bill further to amend the Code of Criminal Procedure, 1904, together with the Statement of Objects & Reasons explaining the scope of the measure and to state that it is intended to introduce the Bill into the ensuing Council during this Session to commence on 18th Dec 1933 and to pass it at

General and Revenue Secretariat

Date of issue..... 24-10-33.

Signed by..... Mr. G. V. Ramaswami

t of enclosures.....

pied by..... W. 1/10

xamined by.....

~~Our Action by Suspending~~
the Rules of Business. This
procedure is proposed
to be adopted in as much
as the December ~~Session~~ Meeting
will be the last one
~~and the Term of~~ of the present Council
~~Terminates thereafter~~

I am therefore to
request that the Courier
of the Court of Zuora
to the passing of the said
Bill if I can
~~if may~~ kindly be
obtained and communicated
early

I remain etc

~~For~~ General Secy to

From

H. V. Ramaswami, Esq., M.A., B.L.,
General Secretary to Government.

To

The Secretary to the Hon'ble
the Resident in Mysore.

I am directed to forward herewith two copies of the Bill further to amend the Code of Criminal Procedure, 1904, together with the statement of Objects and Reasons explaining the scope of the measure and to state that it is intended to introduce the Bill into the Legislative Council during its Session to commence on 18th December 1933 and to pass it at one sitting, suspending the Rules of Business. This procedure is proposed to be adopted inasmuch as the December meeting will be the last one of the present Council.

I am therefore to request that the consent of the Government of India to the passing of the said Bill into law may kindly be obtained and communicated early.

I have the honour to be,

Sir,

Your most obedient servant

General Secretary to Government.

NOTIFICATION

No. 2578—L. C., Bangalore, dated 16th October 1933.

Under Rule 8 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill further to amend the Code of Criminal Procedure, 1904, for a certain purpose is published for general information with the statement of objects and reasons.

By Order,

C. SUBRAHMANYA AIYAR,
Secretary,
Mysore Legislative Council.

A Bill further to amend the Code of Criminal Procedure, 1904. for a certain purpose.

Whereas it is expedient further to amend the Code of Criminal Procedure, 1904, for the purpose hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Regulation may be called the Code of Criminal Procedure (Amendment) Regulation, 193

Amendment of section 526.

2. In section 526 of the Code of Criminal Procedure, 1904,—

(*a*) In sub-section (5), for the words "has power under this section to award by way of costs" the words may under this section award by way of compensation" shall be substituted;

(*b*) In sub-section (6), for the words "Public Prosecutor" the words "Government Advocate" shall be substituted;

(*c*) In sub-section (6-A), for the word "costs" the word "compensation" shall be substituted, and for the words "any expenses reasonably incurred by such person in consequence of the application" the words "such sum not exceeding two hundred and fifty rupees as it may consider proper in the circumstances of the case" shall be substituted;

(*d*) for sub-section (8) the following sub-section shall be substituted, namely :

"(8) If in any inquiry under Chapter VIII or Chapter XVIII or in any trial, any party interested intimates to the Court at any stage before the defence closes its case that he intends to make an application under this section, the Court shall, upon his executing, if so required, a bond without sureties, of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court, adjourn the case for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon :

Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party, or, where an adjournment under this sub-section has already been obtained by one of several accused, upon a subsequent intimation by any other accused "

(*e*) to sub-section (9) the following Explanation shall be added, namely :—

"*Explanation*.—Nothing contained in sub-section (8) or sub-section (9) restricts the powers of a Court under section 344 " ;

(*f*) after sub-section (9) as so amended the following sub-section shall be added, namely :—

(10) If, before the argument (if any) for the admission of an appeal begins, or, in the case of an appeal admitted, before the argument for the appellant begins, any party interested intimates to the Court that he intends to make an application under this section, the Court shall, upon such party executing, if so required, a bond without sureties of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court postpone the appeal for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon.

Statement of Objects and Reasons

Sub-section 8 of section 526 of the Code of Criminal Procedure, 1904, as it stood prior to its amendment in 1927, provided that if, in any criminal case or appeal before the commencement of the hearing, the Public

Prosecutor, the complainant or the accused notified to the Court before which the case or appeal was pending, his intention to make an application to the High Court for transfer of the case or appeal, the Court should exercise the powers of postponement or adjournment given by section 344 in such a manner as would afford a reasonable time for the application being made and an order being obtained thereon, before the accused was called on for his defence, or, in the case of an appeal, before the hearing of the appeal. Regulation VI of 1927, amended the sub-section so as to provide that if an application for transfer is made at any time in the course of any inquiry or trial, or before the commencement of the hearing of any appeal, "the Court shall adjourn the case or postpone the appeal." It has been found that the practical working of this new procedure has lent itself to abuse and is calculated to defeat the ends of justice. If the accused notifies his intention to make an application to the High Court for transfer, the trial must be adjourned immediately. No discretion is given to the Court by the section. There is no limit to the number of such notifications which may be given during the course of any trial. Nor is there any obligation on the party who has notified his intention of moving the High Court to take any such action. The abuse of process which this sub-section makes possible has been pointedly referred to by Lort-Williams, J., in the case of Neamat Sha *vs.* Emperor (59 Calcutta 482). The abuse may obviously be aggravated to almost any extent, where there is a joint trial, and each accused person is represented by a different pleader. In the hands of reckless and irresponsible parties the section might become a serious instrument of deliberate obstruction of justice and waste of public time, bringing the administration of the law into contempt. There was a general consensus of opinion among judicial authorities in British India that these provisions needed amendment and it was amended by Act XXI of 1932. The Judges of our High Court who were consulted recommend the adoption of the amendment made in British India. The Bill proposes to restrict this unlimited power of the accused to obtain adjournments, by providing that when once an accused has secured an adjournment the Court shall not be bound to adjourn on any subsequent intimation of an intention to apply for transfer made by that same party, and that where there are more than one accused, it shall not be

possible for different accused by a series of successive intimations to secure a series of adjournments.

The Bill does not in any way affect the grounds on which criminal cases may be transferred as specified in sub-section (i) of section 526, nor does it affect the right of any person concerned to make an application for transfer to the High Court at any stage of any proceedings as provided for in sub-sections (3) and (4) of the section.

The proposed amendment does not also restrict the power of the Court to grant adjournments for any reasonable cause under section 344.

Sub-section (6-A) was inserted in the section by the same amending Regulation VI of 1927. It has been found difficult to assess the expenses reasonably incurred by the Government when it opposes an application for transfer inasmuch as the law officers of the Government are paid by salary and not by fees. To obviate this difficulty, sub-sections (5) and (6-A) are proposed to be suitably amended.

Opportunity has also been taken for the substitution of the expression "Government Advocate" for the expression "Public Prosecutor" in sub-section (6) as there is no Public Prosecutor attached to the High Court in Mysore and it is the Government Advocate that represents Government in all criminal proceedings before the High Court.

2748 p 33 Pol. 576

All Communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

No. 10738

FROM

Major G. Kirkbride, I.A.,

SECRETARY TO THE HON'BLE THE RESIDENT IN MYSORE.

To

The General Secretary to the Government of

His Highness the Maharaja of Mysore, Bangalore.

GENERAL SECRETARY 20 NOV. 1933 No. 800

Dated, Bangalore, the 20th November *193*3.

Subject.

Bill to amend the Mysore Code of Criminal Procedure.

SIR,

I am directed to request that two spare copies of the Bill to amend the Mysore Code of Criminal Procedure, forwarded with your letter No.Pol.418/[illegible], dated the 24th October 1933 may kindly be furnished, if available.

I have the honour to be,

Sir,

Your most obedient servant,

25x1'33

for SECRETARY TO THE RESIDENT.

G. R. S. App. F. G. 3.

GENERAL AND REVENUE SECRETARIAT.

(*Continuation sheet draft form.*)

Pol 542 E/2

To the Secretary to the Hon'ble the Resident in Mysore

Sir,

I am directed to forward herewith for your more copies of the Bill to amend the Mysore Code of Criminal Procedure as desired in your letter No 1073-36-P-20-11-33.

I have &c.,

Secretary to Government

24/11

21/11

No.2920-28/Leg.A

Members of the Select Committee for the Bill to amend the Code of Criminal Procedure, 1904.

Messrs. R. Ranga Rao,
A.R. Nagesvara Aiyar,
K.V. Anantaraman,
H.V. Ramaswvami,
K.R. Srinivasa Iyengar,
H.C. Dasappa,
Belur Srinivasiengar,
D.H.Chandrasekharaiya,
K. Chengalaraya Reddy,
& the Mover.

GENERAL AND REVENUE SECRETARIAT,

No. P.2920-28/Legis Dated, Bangalore, 16th December 1933

M E M O.

A meeting of the Select Committee appointed to consider the Bill further to amend the Code of Criminal Procedure, 1904, will be held in the Chambers of the First Member of Council, Public Offices, Bangalore, on Tuesday the 19th December 1933, a 8-30 A.M.

By Order,

Secretary to the Selec
Committee.

G. R. S. App. F. G. 3.

GENERAL AND REVENUE SECRETARIAT.

(*Continuation sheet draft form.*)

40

(Here enter names)

Memo No. P.2920-28/Legis
dated 18/12/33.

A meeting of the Select Committee appointed to consider the Bill further to amend the Code of Cr. Pc., 1904 will be held in the Chambers of the Finance Member of Council on Tuesday the 19th Dec 1933 at 5.30. Pm

By Order,

Secretary to Select Committee

Copy to

1) C.B. for kindly making the seating arrangements in the L.C. Office.

A Copy to the Members

NOTIFICATION

No. 2578—L. C., Bangalore, dated 10th October 1935.

Under Rule 8 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill further to amend the Code of Criminal Procedure, 1904, for a certain purpose is published for general information with the statement of objects and reasons.

By Order,

SUBRAHMANYA AIYAR.

Secretary.

Mysore Legislative Council.

A Bill further to amend the Code of Criminal Procedure, 1904, for a certain purpose.

Whereas it is expedient further to amend the Code of Criminal Procedure, 1904, for the purpose hereinafter appearing; It is hereby enacted as follows.

1. This Regulation may be called the Code of Criminal Procedure (Amendment) Regulation, 1935.

2. In section 526 of the Code of Criminal Procedure, 1904,—

(*a*) In sub-section (5) for the words "has power under this section to award by way of costs" the words "may under this section award by way of compensation" shall be substituted;

(*b*) In sub-section (6), for the words "Public Prosecutor" the words "Government Advocate" shall be substituted;

(*c*) In sub-section (6-A), for the word "costs" the word "compensation" shall be substituted; and for the words "any expenses reasonably incurred by such person in consequence of the application", the words "such sum not exceeding two hundred ~~and fifty~~ rupees as it may consider proper in the circumstances of the case" shall be substituted;

Provided that no such order for payment of compensation shall be passed unless the applicant has had an opportunity of showing cause to the contrary"

(*d*) for sub-section (8) the following sub-section shall be substituted, namely :—

"(8) If in any inquiry under Chapter VIII or Chapter XVIII or in any trial, any party interested intimates to the Court at any stage before the defence closes its case that he intends to make an application under this section, the Court shall, upon his executing, if so required, a bond without sureties, of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court, adjourn the case for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon

Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party, or where an adjournment under this sub-section has already been obtained by one of several accused, upon a subsequent intimation by any other accused

(*e*) to sub-section (9) the following Explanation shall be added, namely :—

Explanation.—Nothing contained in sub-section (8) or sub-section (9) restricts the powers of a Court under section 344

(*f*) after sub-section (9) as so amended the following sub-section shall be added, namely :

(10) If, before the argument (if any) for the admission of an appeal begins, or, in the case of an appeal admitted, before the argument for the appellant begins, any party interested intimates to the Court that he intends to make an application under this section, the Court shall, upon such party executing, if so required, a bond without sureties of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court postpone the appeal for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon.

STATEMENT OF OBJECTS AND REASON.

Sub-section 8 of section 526 of the Code of Criminal Procedure, 1904, as it stood prior to its amendment in 1927, provided that it, in any criminal case or appeal, before the commencement of the hearing, the Public

Prosecutor, the complainant or the accused notified to the Court before which the case or appeal was pending, his intention to make an application to the High Court for transfer of the case or appeal, the Court should exercise the powers of postponement or adjournment given by section 344 in such a manner as would afford a reasonable time for the application being made and an order being obtained thereon, before the accused was called on for his defence, or, in the case of an appeal, before the hearing of the appeal. Regulation VI of 1927, amended the sub-section so as to provide that if an application for transfer is made at any time in the course of any inquiry or trial, or before the commencement of the hearing of any appeal, "the Court shall adjourn the case or postpone the appeal." It has been found that the practical working of this new procedure has lent itself to abuse and is calculated to defeat the ends of justice. If the accused notifies his intention to make an application to the High Court for transfer, the trial must be adjourned immediately. No discretion is given to the Court by the section. There is no limit to the number of such notifications which may be given during the course of any trial. Nor is there any obligation on the party who has notified his intention of moving the High Court to take any such action. The abuse of process which this sub-section makes possible has been pointedly referred to by Lort-Williams, J., in the case of Neamat Sha *vs.* Emperor (59 Calcutta 482). The abuse may obviously be aggravated to almost any extent, where there is a joint trial, and each accused person is represented by a different pleader. In the hands of reckless and irresponsible parties the section might become a serious instrument of deliberate obstruction of justice and waste of public time, bringing the administration of the law into contempt. There was a general consensus of opinion among judicial authorities in British India that these provisions needed amendment and it was amended by Act XXI of 1932. The Judges of our High Court who were consulted recommend the adoption of the amendment made in British India. The Bill proposes to restrict this unlimited power of the accused to obtain adjournments, by providing that when once an accused has secured an adjournment the Court shall not be bound to adjourn on any subsequent intimation of an intention to apply for transfer made by that same party, and that where there are more than one accused, it shall not be

possible for different accused by a series of successive intimations to secure a series of adjournments.

The Bill does not in any way affect the grounds on which criminal cases may be transferred as specified in sub-section (i) of section 526, nor does it affect the right of any person concerned to make an application for transfer to the High Court at any stage of any proceedings as provided for in sub-sections (3) and (4) of the section.

The proposed amendment does not also restrict the power of the Court to grant adjournments for any reasonable cause under section 344.

Sub-section (6-A) was inserted in the section by the same amending Regulation VI of 1927. It has been found difficult to assess the expenses reasonably incurred by the Government when it opposes an application for transfer inasmuch as the law officers of the Government are paid by salary and not by fees. To obviate this difficulty, sub-sections (5) and (6-A) are proposed to be suitably amended.

Opportunity has also been taken for the substitution of the expression "Government Advocate" for the expression "Public Prosecutor" in sub-section (6) as there is no Public Prosecutor attached to the High Court in Mysore and it is the Government Advocate that represents Government in all criminal proceedings before the High Court.

NOTIFICATION

No. 267—*L. C., dated* 19*th December* 1933.

Under Standing Order 49 of the Standing Orders for the conduct of business of the Mysore Legislative Council, the following report of the Select Committee on the Bill further to amend the Code of Criminal Procedure, 1904, is published for general information.

By Order,
C. SUBRAHMANYA AIYAR,
Secretary, Legislative Council.

Report of the Select Committee appointed to consider the Bill further to amend the Code of Criminal Procedure, 1904.

We the members of the Select Committee appointed to consider the Bill further to amend the Code of Criminal Procedure, 1904, have the honour to submit the following report :—

1. We are of opinion that the applicant for a transfer should have had an opportunity of being heard in regard to the award of compensation before the High Court passes such order, and have accordingly added the following proviso to clause 6 (A) of Section 526 :—

> "Provided that no such order for payment of compensation shall be passed unless the applicant has had an opportunity of showing cause to the contrary."

2. We consider that the maximum limit of compensation may be Rs. 200 and have amended clause (*c*) of Section 2 of the Bill by deleting the words "and fifty".

3. The Bill need not be republished.

K. R. Srinivasa Iyengar,
A. R. Nageswara Aiyar.
K. V. Anantaraman,
D. H. Chandrasekharaiya,
H. C. Dasappa,
Belur Srinivasa Iyengar,
H. V. Ramasvami,
R. Ranga Rao,
K. Chengalaraya Reddy,
K. Matthan (*Chairman*).

BANGALORE,
19*th December* 1933.

W D 1933—GPB—250—19-12-33

N.B.—The Section of the Regulation as proposed to be amended is printed immediately below each clause of the Bill. The words deleted are enclosed in square brackets and the words added are printed in italics.

A Bill further to amend the Code of Criminal Procedure, 1904, for a certain purpose

Whereas it is expedient further to amend the Code of Criminal Procedure, 1904, for the purpose hereinafter appearing; It is hereby enacted at follows:—

Short title.

1. This Regulation may be called the Code of Criminal Procedure (Amendment) Regulation, 193

Amendment of section 526

2. In section 526 of the Code of Criminal Procedure, 1904,—

(*a*) In sub-section (5), for the words "has power under this section to award by way of costs" the words 'may under this section award by way of compensation" shall be substituted;

(*b*) In sub-section (6), for the words "Public Prosecutor" the words "Government Advocate" shall be substituted;

(*c*) In sub-section (6-A), for the word "costs" the word "compensation" shall be substituted, and for the words 'any expenses reasonably incurred by such person in consequence of the application" the words "such sum not exceeding two hundred and fifty rupees as it may consider proper in the circumstances of the case" shall be substituted;

(*d*) for sub-section (8), the following sub-section shall be substituted, namely:—

"(8) If in any inquiry under Chapter VIII or Chapter XVIII or in any trial, any party interested intimates to the Court at any stage before the defence closes its case that he intends to make an application under this section, e Court shall, upon his executing, if so required, a bond thout sureties, of an amount not exceeding two hundred pees that he will make such application within a reasonle time to be fixed by the Court, adjourn the case for such period as will afford sufficient time for the application to made and an order to be obtained thereon:

Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party, or, where an adjournment under this sub-section has already been obtained by one of several accused, upon a subsequent intimation by any other accused";

(*e*) to sub-section (9), the following explanation shall be added, namely:—

"*Explanation.*—Nothing contained in sub-section (8) or sub-section (9) restricts the powers of a Court under section 344"

(*f*) after sub-section (9) as so amended, the following sub-section shall be added, namely:—

"(10) If, before the argument (if any) for the admission of an appeal begins, or, in the case of an appeal admitted, before the argument for the appellant begins, any party interested intimates to the Court that he intends to make an application under this section, the Court shall, upon such party executing, if so required, a bond without sureties of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court, postpone the appeal for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon.

526. (1) Whenever it is made to appear to the High Court

(*a*) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses, or

(*e*) that such an order is expedient for the ends of justice, or is required by any provision of this Code,

it may order—

(i) that any offence be inquired into or tried by any Court not empowered under sections 177 to 183 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court

subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case or appeal be transferred to and tried before itself: or

(iv) that an accused person be committed for trial to itself or to a Court of Session.

(2) When the High Court withdraws for trial before itself any case from any Court, it shall observe in such trial, the same procedure which that Court would have observed if the case had not been so withdrawn.

(3) The High court may act either on the report of the lower court, or on the application of a party interested, or on its own initiative.

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Government Advocate, be supported by affidavit or affirmation.

(5) When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if so ordered, pay any amount which the High Court *may under this section award by way of compensation* [has power under this section to award by way of costs] to the person opposing the application.

(6) Every accused person making any such application shall give to the *Government Advocate* [Public Prosecutor] notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6-A) Where any application for the exercise of the power conferred by this section is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of *compensation* [costs] to any person who has opposed the application *such sum not exceeding two hundred and fifty rupees as it may consider proper in the circumstances of the case* [any expenses reasonably incurred by such person in consequence of the application].

(7) Nothing in this section shall be deemed to affect any order made under section 197

Adjournment on application under this section.

"(8) *If in any inquiry under Chapter VIII or Chapter XVIII or in any trial, any party interested*

intimates to the Court at any stage before the defence closes its case that he intends to make an application under this section, the Court shall, upon his executing, if so required, a bond without sureties, of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court, adjourn the case for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon:

Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party, or, where an adjournment under this sub-section has already been obtained by one of several accused, upon a subsequent intimation by any other accused;

[(ii) in the course of any inquiry or trial, or before the commencement of the hearing of any appeal, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending his intention to make an application under this section in respect of such case or appeal, the Court shall adjourn the case or postpone the appeal for such a period as will afford a reasonable time for the application to be made and an order to be obtained thereon.]

(9) Notwithstanding anything hereinbefore contained, a Judge presiding in a Court of Session shall not be required to adjourn a trial under sub-section (8) if he is of opinion that the person notifying his intention of making an application under this section has had a reasonable opportunity of making such an application and has failed without sufficient cause to take advantage of it."

"Explanation.—Nothing contained in sub-section (8) or sub-section (9) restricts the powers of a Court under section 344";

"(10) If, before the argument (if any) for the admission of an appeal begins, or, in the case of an appeal admitted, before the argument for the appellant begins, any party interested intimates to the Court that he intends to make an application under this section, the Court shall, upon such party executing, if so required, a bond without sureties of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court postpone the appeal for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon."

WD 767—GPB—200—27-11-33

D.O.No.1146

DEMAND OFFICE 18. DEC. 1933

THE MYSORE RESIDENCY
Bangalore

Dated, the 18 December 1933

Bill to amend the Mysore Code of Criminal Procedure.

My dear Mr Rama

I am desired to refer to your official letter Pol. 418/P., dated the 24th October 1933 and to say that the Government of India have, as you are no doubt aware, decided to withdraw the restrictions imposed by Article 18 of the Treaty of 1913 upon legislation in the Mysore State. They however consider that the necessary modification of the Treaty should be effected by the exchange of Kharitas between His Excellency the Viceroy and His Highness the Maharaja of Mysore. Colonel Prowden proposes to present to His Highness the Kharita when he is in Mysore during the coming Christmas holidays. The Article cannot of course be considered to have been formally abrogated until the exchange of Kharitas but as it is not likely to be done before the meeting of the Legislative Council at which the Bill to amend the Mysore Code of Criminal Procedure is due for consideration, I am to say that there is no objection to the Bill being passed by the Council

R. Ranga Rao Esquire, B.A., B.L.,
Chief Secretary to the Government of
His Highness the Maharaja of Mysor

G. R. S. VI.—s-III/14]

DRAFT.

SUBJECT.....

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Section. Legis
File No. 31 33
Serial No. 3

Proceedings of the Government of H. H. the Maharaja of Mysore.

Diary No. of letter replied to.....

Order No. D 3193

GENERAL AND REVENUE SECRETARIAT,

, *the*.....*191*

Date of issue... 6/1/84

Signed by...

Ordered that the accompanying Regulation to amend the Code of Criminal Procedure, 1904, which received the assent of His Highness the Maharaja, on the 29th day of December 1933 be published as Regulation No. XIII of 1933, in the *Mysore Gazette* for general information.

Secretary to Government.
Gen Dept

May this be—

(i) Printed?

(ii) Treated as a standing order?

(iii) Published in the "Gazette" English part?

(iv) Translated?

(v) Placed at the disposal of the Press?

) Published in the "Gazette" Kannada part?

T.

The Compiler, *Mysore Gazette*, for publication in Part III of the Gazette, in English and Kannada and for supply of .....spare copies in English, and .....spare copies in Kannada to be sent per S.O this office, and.....spare copies in English and.....spare copies in Kannada to the Curator, Government Central Book Depot, Bangalore. Proofs should be sent to this office for approval before publication

Copies to Translation Section

4/1/34

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE

Read:-

Order No. P 3193/Legs 34-33-3

Bangalore, dated the 6th January 1934.

Ordered that the accompanying Regulation further to amend the Code of Criminal Procedure, 1904, which received the assent of His Highness the Maharaja, on the 29th day of December 1933, be published as Regulation No. XIII of 1933, in the Mysore -- Gazette for general information.

For General Secretary to Government.

To

The Compiler, Mysore Gazette, for publication in Part III of the Gazette, in English and Kannada and for supply of spare copies in English and Kannada as per Standing Order. Proofs should be sent to this office for approval before publication.

TRN

NOTIFICATION.

Order No. P. 3193—Legis. 34-33-3, Bangalore, dated the 6th January 1934.

Ordered that the accompanying Regulation further to amend the Code of Criminal Procedure, 1904, which received the assent of His Highness the Maharaja, on the 29th day of December 1933, be published as Regulation No. XIII of 1933, in the *Mysore Gazette* for general information.

By Order,
H. V. RAMASVAM.
General Secretary to Government.

REGULATION No. XIII OF 1933.

(Received the assent of His Highness the Maharaja on the 29th day of December 1933.)

A Regulation further to amend the Code of Criminal Procedure, 1904, for a certain purpose.

Preamble. Whereas it is expedient further to amend the Code of Criminal Procedure, 1904, for the purpose hereinafter appearing; It is hereby enacted as follows:—

Short title. 1. This Regulation may be called the Code of Criminal Procedure (Amendment) Regulation, 1933.

Amendment of section 526. 2. In section 526 of the Code of Criminal Procedure, 1904,—

(*a*) In sub-section (5), for the words "has power under this section to award by way of costs" the words 'may under this section award by way of compensation" shall be substituted;

(*b*) In sub-section (6), for the words "Public Prosecutor" the words "Government Advocate" shall be substituted:

(*c*) In sub-section (6-A), for the word "costs" the word "compensation" shall be substituted, and for the words "any expenses reasonably incurred by such person in consequence of the application" the words "such sum not exceeding two hundred rupees as it may consider proper in the circumstances of the case" shall be substituted;

(ii) The following proviso shall be added to sub-section (6-A) :—

" Provided that no such order for payment of compensation shall be passed unless the applicant has had an opportunity of showing cause to the countary."

(*d*) for sub-section (8) the following sub-section shall be substituted, namely :—

(8) If in any inquiry under Chapter VIII or Chapter XVIII or in any trial, any party interested intimates to the Court at any stage before the defence closes its case that he intends to make an application under this section, the Court shall, upon his executing, if so required, a bond without sureties, of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court, adjourn the case for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon :

Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party, or, where an adjournment under this sub-section has already been obtained by one of several accused, upon a subsequent intimation by any other accused ; "

(*e*) to sub-section (9) the following Explanation shall be added, namely :—

" *Explanation.*—Nothing contained in sub-section (8) or sub-section (9) restricts the powers of a Court under section 344 ; "

(*f*) after sub-section (9) as so amended the following sub-section shall be added, namely :—

" (10) If, before the argument (if any) for the admission of an appeal begins, or, in the case of an appeal admitted, before the argument for the appellant begins, any party interested intimates to the Court that he intends to make an application under this section, the Court shall, upon such party executing, if so required, a bond without sureties of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court postpone the appeal for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon."

MIRZA M. ISMAIL
Dewan.

Printed by the Superintendent at the Government Press, Bangalore.

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